Government is not entitled to so apply the statute as to bring multiple actions designed to destroy a business before it can be heard in its own defense is not frivolous, to say the least.

"I am constrained to withhold assent to a decision that passes in silence what I think presents a serious issue."

Mr. JUSTICE FRANKFURTER (dissenting): "While I agree with the Court as to the constitutional and statutory issues canvassed in its opinion, I am unable to answer Mr. Justice Jackson's dissent, and I must therefore yield to it.

"Of course Congress may constitutionally vest judicially unreviewable discretion in an executive agency to initiate multiple suits in order to stop trafficking in pernicious drugs or even in those that are harmless, where efficacy is misrepresented. I agree that it has done so in the Federal Food, Drug, and Cosmetic Act of 1938. 52 Stat. 1040, 21 U. S. C. § 301 *et seq.* But it does not at all follow that Congress has thereby cut off the right of access to the courts to prove that the enforcing agency has not acted within the broadest bounds of fair discretion, rare as the occasion may be for such an attempt and however improbable its success.

"Such I understand to be the nature of the proceedings below and such the basis of the District Court's decree. Unless we can say, as I cannot, that the findings in support of it have no support in the evidence, we should not hold that the court below was without jurisdiction to entertain the suit.

"The limited claim which the District Court sustained falls precisely within the qualification left open by this Court in a leading case sustaining the power of Congress to vest unreviewable discretion in executive agencies. When the Court was urged to deny this power of Congress and 'extreme cases' were put showing 'how reckless and arbitrary might be the action of Executive officers,' the Court made this answer:

> It will be time enough to deal with such cases, as and when they arise. Suffice it to say, that the courts have rarely, if ever, felt themselves so restrained by technical rules that they could not find some remedy, consistent with the law, for acts, whether done by government or by individual persons, that violated natural justice or were hostile to the fundamental principles devised for the protection of the essential rights of property. *Monongahela Bridge Co.* v. *United States*, 216 U. S. 177, 195.

Mr. Justice Harlan, speaking for the Court, cast its thought in the language current at the time. But the thought behind the words is not outmoded and controls, I believe, the case before us."

The plaintiff filed a petition for rehearing in the Supreme Court, together with a motion for a stay of the mandate. On June 14, 1950, Mr. Justice Douglas denied the motion for a stay of the mandate. A motion was filed in the District Court on July 5, 1950, to stay the entry of an order on the mandate in that court until the Supreme Court had had an opportunity to act upon the petition for rehearing. On July 21, 1950, Judge Tamm denied the motion for a stay and, in compliance with the mandate of the Supreme Court, ordered that the decree of permanent injunction of December 14, 1949, be dissolved and vacated. A petition to the three-judge court to review Judge Tamm's action was filed on behalf of the plaintiff on July 22, 1950. On October 16, 1950, the Supreme Court denied the petition for rehearing. On November 15, 1950, the three-judge court entered an order denying the petition for review of Judge Tamm's action.

3383. Action to enjoin and restrain interstate shipment of Nutrilite Food Supplement. U. S. v. Mytinger & Casselberry, Inc., Nutrilite Products, Inc., Lee S. Mytinger, William S. Casselberry, and Carl F. Rehnborg. Consent decree granting injunction. (Inj. No. 214.)

COMPLAINTS FILED: The original complaint was filed on September 22, 1949. On October 23, 1950, the following amended complaint was filed: